IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 362 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS
and
Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHANKERBHAI NATHABHAI PARMAR

Versus

STATE OF GUJARAT

Appearance:
MR YN OZA, FOR MR BC DAVE for Petitioners
MR KC SHAH, APP for Respondent No. 1
MR PJ PATEL, for Victim Sitaben

CORAM : MR.JUSTICE K.R.VYAS
and
MR.JUSTICE C.K.BUCH

Date of decision: 14/06/2000

ORAL JUDGEMENT (PER : K.R.VYAS, J)

The appellants, who are accused nos. 1 & 2 of Sessions Case No. 423/95, have filed this appeal challenging the judgment and order dated 31.3.2000 passed by the learned Addl. City Sessions Judge, Ahmedabad, whereby the learned trial Judge convicted the appellant nos. 1 & 2 for the offence punishable under sec.307, R/w sec.34 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC" for short) and sentenced appellant accused no.1 to suffer R/I for 10 years and to pay a fine of Rs. 10,000/ (Rs. ten thousand only), I/d to undergo S/I for 6 months and sentenced appellant accused no.2 to suffer R/I for 10 years and to pay a fine of Rs.2,000/ (Rs. two thousand only), I/d to suffer S/I for 3 months. Learned trial Judge further directed that if fine amount of Rs. 10,000/ imposed on appellant no.1, is paid by the him, whole amount of Rs.10,000/ be paid to the victim Sitaben, w/o Jayantibhai Nathabhai.

With the consent of the learned advocates appearing for the parties, this appeal is taken up for hearing today.

The incident is an unfortunate one in the sense that appellant no.1 being Jeth (elder brother of the husband of victim Sitaben) had inflicted blows with knife on the private part of victim Sitaben on 27.6.1995 in the open place of the society and appellant no.2 who is the wife of appellant no.1 and original accused no.3 who is mother-in-law of the victim, caught legs of victim Sitaben to facilitate appellant no.1 to inflict knife blows on the private part of Sitaben. Learned trial Judge, after appreciating evidence on record, vide impugned judgment and order dated 31.3.2000, convicted and sentenced both the appellants, as stated above. Since original accused no.3 Amraben expired during the pendency of trial, trial qua her was abated.

Learned Senior Counsel Mr. Y.N.Oza, for the appellants fairly conceded before us that he is not in a position to dislodge the reasonings given by the learned trial Judge holding appellants guilty for the offences for which they were charged and came to be convicted. He, therefore, does not challenge the order of conviction passed against the appellants. We ourselves have gone through the reasonings of the learned trial Judge. Suffice it to say that we are also in total agreement with the reasonings given by the learned trial Judge. Thus, there is no reason for us to take a different view in the matter. Since we uphold the conviction of the appellants, it is not necessary for us to repeat the

reasonings given by the learned trial Judge.

Mr.Y.N.Oza, however, vehemently submitted on the question of sentence imposed upon the appellants. Mr. Oza submitted that at the intervention of caste members, parties have decided to compromise whereby the victim and her husband will be paid their share worth Rs. 1 lakh + Rs. 15,000/ towards medical expenses and in turn, they will vacate the premises presently occupied and enjoyed by them and will shift to some other place. Mr. Oza submitted that the appellants are also ready and willing to pay reasonable amount of compensation over and above the amount of Rs. 1,15,000/. He, therefore, prayed for reduction of sentence on payment of adequate compensation to the victim. Victim Sitaben who comes on her own and remains present in the Court with her learned advocate Mr. P.J. Patel. According to her, she will have no objection if sentence imposed upon the appellants is reduced provided she is paid adequate compensation to be determined by the Court. Learned APP Mr. K.C.Shah, however, submitted that offence punishable under sec.307 IPC being non-compoundable offence, no party can plead about the compromise and to claim reduction of sentence.

We are conscious of the fact that the offence punishable under sec.307 IPC, being non-compoundable offence, even if parties settled their disputes, law breaker cannot be permitted to escape. We are also conscious of the fact that case on hand, being heinous in nature, it should not be taken lightly. However, we also cannot loose sight of the fact that the parties are close relatives to each other and on a trifle issue, in a hit of moment, the unfortunate incident has taken place for which appellants are tried and convicted as aforesaid. Even ignoring compromise arrived at by the parties, considering peculiar facts and circumstances of the case, while confirming conviction, we feel that if sentence imposed is suitably modified by directing the appellants to pay increased amount of fine with a further direction to make payment of adequate amount to the victim by way of compensation out of amount of fine paid, in our opinion, that would squarely meet the ends of justice and will also help to maintain harmony of relations amongst the parties. In any case, since this being the desire of the parties, in our opinion, normally the court should accept the compromise even though offence in question is non compoundable. We are supported in our view by the decision of the Apex Court in the case of Surendra Nath Mohanty & Anr. v/s State of Orissa, reported in (1999) 5 SCC 238. In that case also, though offence punishable under sec.326 of IPC being non-compoundable, considering

facts and circumstances of the case, the Apex Court reduced sentence to the period already undergone with fine of Rs. 5000/ on each accused.

In view of the peculiar facts and circumstances of the case and in view of the decision of the Apex Court in Surendra Nath's case (supra), appeal requires to be allowed accordingly. Hence, following order:-

For the reasons aforesaid, appeal is partly allowed. Impugned judgment dated 31.3.2000 passed by learned Addl. City Sessions Judge, Ahmedabad in Sessions Case No. 423/95 convicting the appellants-accused for the offence punishable under sec.307 R/w sec.34 of I.P.Code, is hereby confirmed. However, order of sentence of R/I for 10 Years and to pay a fine of Rs.10,000/, I/d to undergo further S/I for six months for the offence punishable under sec.307 of IPC imposed on appellant no.1 and order of sentence of R/I for 10 years and to pay fine of Rs. 2000/ I/d to under go further S/I for 3 months for the offence punishable under sec. 307 of IPC imposed on appellant no.2 is hereby modified to the effect that order of sentence as aforesaid is reduced to the period already undergone by both the appellants and payment of fine is increased to Rs. 26,000/ (Rs. Twenty Six Thousand only) to be paid by each of the appellants, I/d to undergo R/I for 2 Years. On amount of fine being paid, out of total amount of fine of Rs.52,000/, victim Sitaben shall be paid an amount of Rs. 50,000/ (Rs. fifty thousand only) by way of

compensation. Both the appellants be released forthwith on payment of fine amount as aforesaid.

Appeal stands allowed accordingly. Writ to be sent to the jail authorities concerned.

Direct Service is permitted.

14.6.2000 [K.R. Vyas, J]

[C.K. Buch, J]

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